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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945

—
No. 434.
—

CAPITAL TRANSIT COMPANY, A Corporation, *Petitioner,*

v.

JULIA S. JACKSON, *Respondent.*

—
**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA, AND BRIEF IN SUP-
PORT THEREOF.**
—

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JULIA S. JACKSON, *Respondent*.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA.**

The Capital Transit Company, a corporation, prays that a writ of certiorari issue to review the decree and judgment of the United States Court of Appeals for the District of Columbia entered June 18, 1945.

Jurisdiction.

The decree and judgment of the United States Court of Appeals for the District of Columbia was entered on June 18, 1945. (R. 19) The jurisdiction of this Court is invoked under Section 240a of the Judicial Code as amended by the Act of February 13, 1925.

Questions Presented.

1. Res Ipsa Loquitur does not apply where the plaintiff below had it within her power to produce in her own case evidence of the negligence claimed by her and in fact did produce witnesses who knew thereof but whom she refused to examine with respect to the question of negligence.

2. Res Ipsa Loquitur does not apply where the plaintiff was a passenger on a street railway car and was injured as a result of a collision between two moving vehicles only one of which was under the control of Petitioner.

Statement.

The plaintiff below was a passenger on the street car of the Petitioner when a collision occurred between this street car and a laundry truck owned and operated by the Ambassador Laundry, Lyle O. Cook, proprietor. Plaintiff below claims she was injured in this accident and said she did not know what caused the collision, but she called to the witness stand the operator of the street car and the driver of the laundry truck and examined them as to certain matters but failed and refused to examine them with respect to the question of negligence involved. The plaintiff then rested and both the Capital Transit Company and the Ambassador Laundry moved for a directed verdict on the ground that the plaintiff had failed to show any act of negligence; both of which Motions were granted by the Trial Judge. (R. 5, 6) Thereafter Motions for a new Trial were made, argued, and denied, and plaintiff below perfected her appeal to the Municipal Court of Appeals for the District of Columbia which affirmed the judgment of the Trial Court in favor of the Ambassador Laundry but reversed the judgment with respect to the Capital Transit Company. From this action of the Municipal Court of Appeals for the District of Columbia, Petitioner filed a Petition for an appeal to the United States Court of Appeals for the District of Columbia, which Petition was granted. Thereafter the

United States Court of Appeals for the District of Columbia affirmed the opinion of the Municipal Court of Appeals for the District of Columbia (R. 19); and because of this Petitioner files this its petition for a writ of certiorari.

Reasons for Granting the Writ.

The two questions here presented are of general importance in this jurisdiction; and while Petitioner recognizes that there is a conflict of decisions in this regard, yet it suggests that there is a growing need for a proper application of the doctrine of *res ipsa loquitur*. It is suggested that the remedy for the present chaos in its application is not necessarily to disregard the whole doctrine and "dump it in the dust bin" but rather to induce a fair and orderly application of the doctrine commensurate with, but not beyond the reason and true intent of its original application. That is to say, in circumstances where a plaintiff could not and did not have any means of proving the negligence alleged and where such knowledge was wholly within the power of the defendant, then the doctrine would seem to be reasonable; but where as in this case, there were no facts peculiarly within the knowledge or control of Petitioner, which were not in the knowledge and control of the plaintiff below, it would seem unreasonable that the doctrine could be held to apply.

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